National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: April 17, 1998

TO: Frederick Calatrello, Regional Director, Region 8

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Local 12, UAW, (Chrysler-Jeep), Case 8-CB-8500

133-0100, 536-2581-3370-0150, 536-2581-6733-7500

This case was submitted for advice as to whether the Union violated Section 8(b)(1)(A) in its representation of the Charging Party, who apparently is disabled within the meaning of the Americans with Disabilities Act, 42 U.S.C. 12101, et seq.

We agree with the Region that the charge should be dismissed, absent withdrawal. We specifically note:

1.The Union and the Employer have agreed to settle the Charging Party's grievance by continuing to seek a job he can perform.

2.The PQX coordinator position which the Charging Party has sought is a nonunit position filled by the Union and paid by the Employer; therefore, the Union's refusal to appoint the Charging Party to that position does not breach the Union's duty of fair representation of employees in the bargaining unit.

3.The Union-Employer agreement that disabled or medically restricted employees cannot bump other employees including less senior disabled employees, to obtain jobs they can perform when there are no suitable vacancies is consistent with the Union's duty of fair representation.

General Counsel Memorandum 92-9, "Americans with Disabilities Act, 42 U.S.C. 12101, et seq.," p. 7 fn. 24, dated August 7, l992, states that a union violates its duty of fair representation by discriminating against employees it represents based on "invidious" considerations such as disability, citing racial and sex discrimination cases.[1] The duty of fair representation requires a union to represent employees without regard to disability.[2] Therefore, a union which demonstrates "invidious motivation" in its conduct and would not have acted "but for" discriminatory reasons violates the duty of fair representation.[3]

However, in serving the bargaining unit, a union is allowed a wide range of reasonableness, "subject always to complete good faith and honesty of purpose in the exercise of its discretion."[4] Thus, a union may balance the rights of individual employees against the collective good, or it may subordinate the interests of one group of employees to those of another group, if its conduct is based upon permissible considerations.[5] If union conduct resolves conflicts between employees or groups of employees in a rational, honest, nonarbitrary manner, such actions may be lawful under Section 8(b)(l)(A) even if some employees are adversely affected by a union decision.[6]

Here, the Union has agreed to just such a resolution of the possible conflict between the overall bargaining unit and employees with medical restrictions limiting their ability to perform some jobs. The Employer and the Union have agreed to attempt to place disabled employees in available jobs they can perform, consistent with their seniority; however, disabled or medically restricted employees cannot obtain jobs they can perform by bumping employees in regular positions or less senior disabled employees already employed in positions that accommodate their disabilities. This Union-Employer agreement is consistent with the ADA, which does not give a disabled employee the right to bump another employee out of his or her position in order to obtain a job that accommodates the individual's disability. See, e.g., Hendricks-Robinson v. Excel Corporation, 972 F.Supp. 464, 469 and cases cited therein (C.D. Ill. 1997).

Moreover, there is no evidence that the Union's responses to the Charging Party's grievance have been motivated by any invidious considerations.

Accordingly, the charge should be dismissed, absent withdrawal.

B.J.K.

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[1] See e.g., Independent Metal Workers Union Local No. l (Hughes Tool Co.)], l47 NLRB l573, l575-l575, l602-l604 (l964) (race discrimination); Bell & Howell Co., 230 NLRB 420, 420-423 (l977), enf'd 598 F.2d l36 (D.C. Cir. l979) (sex discrimination).

[2] Cf. Local l2, United Rubber Workers (Business League of Gadsden), l50 NLRB 3l2, 3l7 (l964) (racial discrimination).

[3] Id.

[4] Ford Motor Company v. Huffman, 345 U.S. 330, 338 (l953) (no breach of duty of fair representation by union agreement to contract clause that granted enhanced seniority to one group of employees, thus causing layoffs in another group of employees). See also Airline Pilots Ass'n, International v. O'Neill, 499 U.S. 65, l36 LRRM 272l, 2724 (l99l).

[5] Id.

[6] See Humphrey v. Moore, 375 U.S. 335, 348-349 (l964) (no breach of duty of fair representation where union resolved seniority dispute in favor of one group of employees over another). See also Airline Pilots Ass'n, International v. O'Neill, supra.